STATE OF MICHIGAN

COURT OF APPEALS

SCOTT JOHNSON and KATHLEEN JOHNSON,

Plaintiffs-Appellants,

v

SULTAN BHIMANI, M.D. and ADVANCED DIAGNOSTIC IMAGING, P.C.,

Defendants-Appellees,

and

COVENANT HEALTHCARE SYSTEM,

Defendant.

UNPUBLISHED
February 10, 2011

No. 292327
Saginaw Circuit Court
LC No. 04-054130-NH

Before: CAVANAGH, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order that granted defendants' motion to strike plaintiffs' expert radiology witness, Harold Parnes, M.D., and dismissed plaintiffs' lawsuit with prejudice. We affirm.

Plaintiff Scott Johnson[1] suffered pelvic injuries that eventually required surgery as a result of falling off a ladder. Plaintiffs alleged that defendant Sultan Bhimani, M.D., a radiologist at the hospital, initially failed to diagnose plaintiff's injury causing complications and a worsening of his condition.

Plaintiffs argue that the trial court incorrectly determined that Parnes was not qualified as an expert witness under MCL 600.2169. We disagree.

[1] References to "plaintiff" in the singular throughout this opinion are to Scott Johnson because Kathleen Johnson's claim for loss of consortium is derivative to his primary claim of medical malpractice.

A trial court's ruling regarding a proposed expert's qualifications to testify is reviewed for an abuse of discretion. *Kiefer v Markley*, 283 Mich App 555, 556; 769 NW2d 271 (2009). An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes. *Id*.

In malpractice actions, parties are obligated to provide an expert witness to articulate the applicable standard of care involved. MCL 600.2912d(1)(a); *Tate ex rel Estate of Hall v Detroit Receiving Hosp*, 249 Mich App 212, 216; 642 NW2d 346 (2002). A person cannot give expert testimony in a malpractice suit unless the person meets the list of qualifications of MCL 600.2169. MCL 600.2169(1); *Grossman v Brown*, 470 Mich 593, 599; 685 NW2d 198 (2004). MCL 600.2169(1)(a) specifically states that an expert witness must "specialize[ ] at the time of the occurrence that is the basis for the action" in the same specialty as the defendant physician. The specialty requirement is tied to the specialty engaged in during the occurrence of the alleged malpractice and not unrelated specialties that a defendant physician may hold. *Halloran v Bhan*, 470 Mich 572, 577 n 5; 683 NW2d 129 (2004). The specialty or subspecialty that the defendant physician was practicing at the time of the alleged malpractice is the one most relevant specialty or subspecialty that must be matched by the proposed expert. *Woodard v Custer*, 476 Mich 545, 566; 719 NW2d 842 (2006). It is not disputed that diagnostic radiology is the one most relevant specialty involved here, and that both defendant Bhimani and Parnes were board certified in general diagnostic radiology. Thus, the requirements of MCL 600.2169(1)(a) were met.

However, whether Parnes satisfied MCL 600.2169(1)(b) is the dispute. The trial court granted defendants' motion to strike Parnes as an expert because it found he had not devoted the majority of his professional time during the year preceding the alleged malpractice practicing diagnostic radiology. According to MCL 600.2169(1)(b), the proposed expert must have devoted a majority of his or her professional time during the year immediately preceding the date on which the alleged malpractice occurred to practicing or teaching the one most relevant specialty the defendant physician was practicing at the time of the alleged malpractice. In *Kiefer*, 283 Mich App at 559, this Court held that "majority" of professional time meant that a proposed expert physician was required to "spend greater than 50 percent of his or her professional time practicing the relevant specialty the year before the alleged malpractice."

Here, Parnes was questioned extensively regarding how he spent his professional time. Parnes stated that, although the specialty he engaged in was determined by the needs of his patients, he spent the majority of his professional time in neuroradiology. Parnes estimated that he spent 50 to 80 percent of his professional time in neuroradiology. Therefore, Parnes was not able to meet the requirements of MCR 600.2169(1)(b) because he did not spend more than 50 percent of his professional time practicing the one relevant specialty of general diagnostic radiology.

Plaintiffs argue that, because neuroradiology is a subspecialty of diagnostic radiology and there is considerable overlap of the fields, the trial court should have found that Parnes spent the majority of his time practicing diagnostic radiology. Parnes explained that neuroradiology was a subspecialty of general radiology that involved imaging of the brain, spine, and nerves, with different modalities. Defendant Bhimani also stated that neuroradiology was a branch of radiology that deals with the brain, spinal cord, and central nervous system, and that general radiology is the branch dealing with imaging the rest of the body, including the lumbar region

and pelvis at issue here. Parnes indicated that muscular skeletal films and diagnostic films would be within the realm of neuroradiology if they were related to the spine or even sacroiliac joint, but that they were also in the realm of diagnostic radiology. Parnes also asserted that components of neuroradiology were muscular skeletal because all systems worked together as one, meaning that muscular skeletal was related to the nervous system.

However, general diagnostic radiology and neuroradiology are two distinct specialties, and practicing neuroradiology is not the same as practicing general diagnostic radiology. A "specialty" is a particular branch of medicine or surgery in which one can potentially become board certified. *Woodard*, 476 Mich at 561. A "subspecialty" is a particular branch of medicine or surgery in which one can potentially become board certified that falls under a specialty or within the hierarchy of that specialty. *Id*. at 562. "A subspecialty, although a more particularized specialty, is nevertheless a specialty." *Id*. For the purposes of MCL 600.2169(1)(b), a subspecialty is a specialty. *Id*. at 566 n 12. Therefore, the specialties of diagnostic radiology and neuroradiology are distinct from each other.

The case of *Hamilton v Kuligowski*, 261 Mich App 608, 611-612; 684 NW2d 366 (2004), rev'd sub nom *Woodard v Custer*, 476 Mich 545, 566; 719 NW2d 842 (2006), is factually similar to the instant case because the defendant's one relevant specialty was internal medicine and the proposed expert also specialized in internal medicine, but spent the majority of his professional time practicing a subspecialty of internal medicine, infectious diseases. This Court held that the proposed expert was qualified as a witness because, by practicing the infectious diseases subspecialty, "he devoted the majority of his professional time to the 'active clinical practice' of defendant's 'internal medicine specialty.'" *Hamilton*, 261 Mich App at 611-612. However, the Supreme Court reversed, finding that the proposed expert witness was not qualified under MCL 600.2169(1)(b) because he did not devote a majority of his professional time to practicing the one most relevant specialty or subspecialty that the defendant physician was practicing at the time of the alleged malpractice. *Woodard*, 476 Mich at 578-579.[2] Even though the proposed expert practiced a subspecialty of the defendant's one most relevant specialty, the Supreme Court specifically found that the "plaintiff's proposed expert witness did not devote a majority of his time to practicing or teaching general internal medicine. Instead, he devoted a majority of his professional time to treating infectious diseases." *Id*. at 577-578. Similarly, here, Parnes did not devote a majority of his time practicing the one most relevant specialty of defendant Bhimani, i.e., diagnostic radiology. Rather, Parnes testified that he devoted the majority of his professional time to neuroradiology. Therefore, the trial court did not abuse its discretion in finding that Parnes was not qualified as an expert witness under MCL 600.2169(1)(b).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra

[2] *Hamilton v Kuligowski* was decided as a companion case to *Woodard v Custer*.